

House Bill 23

By: Representatives Oliver of the 83rd, Manning of the 32nd, Gardner of the 57th, Ashe of the 56th, Benfield of the 85th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 2 of Title 49 of the Official Code of Georgia, relating to residential child care licensing and the creation of the Department of Human Services, so as to enact the "Foster Children's Psychotropic Medication Monitoring Act"; to provide for a short title; to provide for legislative intent; to provide for definitions; to require the Department of Human Services to establish regulations governing the use of psychotropic medications for foster children in state custody; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 2 of Title 49 of the Official Code of Georgia, relating to residential child care licensing and the creation of the Department of Human Services, is amended by adding a new article to read as follows:

"ARTICLE 3

49-2-30.

This article shall be known and may be cited as the 'Foster Children's Psychotropic Medication Monitoring Act.'

49-2-31.

The intent of this article is to:

(1) Comply with the Health Care Oversight and Coordination Plan mandates of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351;

(2) Provide for the health and well-being of children who are in the custody of the Department of Human Services because they have been abused, neglected, or abandoned; and

(3) Manage Georgia's rising costs of health care by ensuring that children in state custody receive appropriate and properly managed mental health care, including psychotropic medications, in the context of a coordinated health care plan which provides for the child's physical, developmental, emotional, and mental well-being.

49-2-32.

As used in this article, the term:

(1) 'Child' or 'children' means any person under the age of 18 who is in the custody of the Department of Human Services. This term does not include children who are not in the custody of the Department of Human Services. This term does include children who are in the custody of the Department of Human Services and another state department or agency as allowed by Georgia law; provided, however, that this shall not include children in the custody of the Department of Juvenile Justice.

(2) 'Psychotropic medication' means medication for which the prescribed intent is to affect or alter thought processes, mood, or behavior, including, but not limited to, antipsychotic, antidepressant, and anxiolytic medication and behavior medications.

49-2-33.

The Department of Human Services shall establish regulations for the use of psychotropic medications for children in the custody of the Department of Human Services. The regulations shall be adopted, promulgated, and implemented in accordance with this article and Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The regulations shall include:

(1) Provisions regarding the administration of psychotropic medications to children that include, but are not limited to:

(A) Creation of psychotropic medication utilization parameters for children. The utilization parameters shall be based on current, peer-reviewed research and best practices in the field of child psychiatry and shall be consistent with parameters and guidelines recommended by local and national experts in the field of child psychiatry and pharmacology;

(B) Requiring the Department of Human Services to have an independent clinical review team conduct a semiannual review of each child's psychotropic medications and mental or behavioral health services, treatments, and therapies. The independent clinical review team shall include a child psychiatrist and shall not include the prescriber or an employee or contractor of the child caring institution or residential treatment facility where the child is housed;

59 (C) Regulations governing the provision of as-needed prescriptions for psychotropic
60 medications for children; and

61 (D) Encouraging the use of nonpharmacological interventions and therapies, in
62 addition to or in the place of psychotropic medication, where appropriate;

63 (2) Provisions addressing informed consent and notifications related to the
64 administration of psychotropic medications that include, but are not limited to:

65 (A) Notwithstanding Code Section 15-11-13 or any other provision of law, a process
66 for including the child, the child's caregiver or foster parent, and the child's legal
67 guardian in the mental health care of the child, which is documented in the child's
68 health record;

69 (B) A process for obtaining written informed consent from the child's legal guardian
70 and the child, if he or she is age 14 years or older, in advance of the child starting
71 psychotropic medication;

72 (C) A process for consulting with an independent clinical review team which includes
73 a child psychiatrist before a prescription can be filled for a child for a psychotropic
74 medication that falls outside the psychotropic medication utilization parameters. The
75 independent clinical review team shall not include the prescriber or an employee or
76 contractor of the child caring institution or residential treatment facility where the child
77 is housed;

78 (D) Notwithstanding Code Section 15-11-13 or any other provision of law, a process
79 for including the child's attorney and the child's guardian ad litem, if either are so
80 appointed, in the development and implementation of the child's mental health plan;

81 (E) Requiring documentation of the child's assent or objection to psychotropic
82 medications if the child is under 14 years of age;

83 (F) The administration of psychotropic medications in the event of a psychiatric
84 emergency, as defined by regulation of the Department of Human Services; and

85 (G) An independent, fair process for resolving differences of opinions among
86 prescribing providers, the child's legal guardian, the independent clinical review team,
87 and the child or the child's attorney or guardian ad litem, if either are so appointed; and

88 (3) Reporting and tracking requirements related to the provision of mental health
89 services and the administration of psychotropic medications that include, but are not
90 limited to:

91 (A) Requirements that records maintained by the Department of Human Services on
92 each child contain current information, including, but not limited to:

93 (i) All prescription medications the child is taking;

94 (ii) The dosage of each medication;

95 (iii) The associated diagnosis for each medication;

(iv) The side effects of each medication; and

(v) All mental and behavioral health therapies, treatments, services, and interventions being provided to the child and recommended for the child;

Such records shall be maintained in accordance with the requirements of the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996, P.L. 104-191.

(B) As part of the informed consent process required pursuant to paragraph (2) of this Code section, information required in subparagraph (A) of this paragraph shall be provided to the child, the child's caregiver or foster parent, and the child's legal guardian and to the child's attorney and guardian ad litem, if either are so appointed, every time a change is made;

(C) Information required in subparagraph (A) of this paragraph shall be presented at each judicial or agency review of the child's case; and

(D) Establishing a data base, or using an existing data base, to track the use of psychotropic medications with children in the custody of the Department of Human Services.

49-2-34.

Within 90 days of the effective date of this article, the Department of Human Services shall give notice of its intent to adopt the regulations required by this article in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'"

SECTION 2.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.